
(2002) 08 KL CK 0041

In the High Court Of Kerala

Case No : CMP 3683 of 2001 in WA 930 of 1993-C

The Managing Director, Kerala State Handloom Development Corporation Ltd.

APPELLANT

Vs

P. Nanu, Smt. Kamalam S. Pillai and Biju, rep. by Kamalam S. Pillai

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 304, 409, 420

Citation : (2002) 3 ILR (Ker) 270

Hon'ble Judges : K.S. Radhakrishnan, J;K.A. Mohammed Shafi, J

Bench : Division Bench

Judgement

Radhakrishnan, J.—This petition has been preferred by the Managing Director of the Kerala State Handloom Development Corporation Limited (hereinafter referred to as "the Corporation") seeking to modify the judgment to the effect that respondents herein are not liable to be paid backwages or other monetary benefits as ordered by the learned single judge.

2. Short facts which are necessary for disposal of this petition, are as follows: Writ petition was preferred by the respondents herein seeking to quash various orders by which backwages were denied to the first respondent as well as respondents 2 and 3 who are the wife and minor son of deceased V.P.S. Pillai who was working as Internal Auditor in the Corporation. First respondent was working as Assistant in the Corporation. Learned single judge allowed the writ petition and directed the Company to re-instate first respondent with backwages and consequential benefits treating him as if he was in continuous service. The Corporation was also directed to pay salary and allowances and also terminal benefits which would have been payable to V.P.S. Pillai had he been in continuous service till his death or till the age of his superannuation whichever is earlier. The Corporation filed appeal W.A. No. 930 of 1993 against the said judgment. This court disposed of the writ appeal on 28.9.1999 stating as follows:

"It goes without saying that when the acquittal is on technical ground and not on merits, the disciplinary proceedings could be continued notwithstanding the acquittal. In the present case, the appellate court has recorded certain findings for the absence of materials to implicate the accused persons. The delay in all cases cannot be a ground to dispense with the disciplinary proceedings. In the peculiar circumstances of the case, when one of the employees has already expired, no useful purpose would be served by permitting to continue the disciplinary proceedings. To that effect we agree with the learned single judge. We take note that another person was an accused who was taken back to service on his undertaking not to claim backwages. This fact is of some relevance while dealing with the present dispute."

With the above observation this court dismissed the appeal. The matter was taken up by the Corporation before the apex court by filing SLP (Civil) No 2620 of 2000. Apex court issued noticed on the question of backwages. The SLP later came up for hearing before the apex court on 12.3.2001. Apex court dismissed the petition as withdrawn stating as follows:

"Counsel for the petitioner wants to approach the High Court for appropriate relief regarding backwages. The SLP is dismissed as withdrawn."

Now the present petition has been preferred contending that the writ petitioners are not entitled to backwages on the plea that they were not honourably acquitted by the criminal court in CrI. A. Nos. 270, 276 and 283 of 1985.

3. First respondent was an Assistant in the Corporation and second and third respondents, as we have indicated earlier are the wife and minor son of V.P.S. Pillai who was working as Internal Auditor in the Corporation. Certain allegations in the nature of granting credits to the customers of the Corporation beyond the sanctioned limits were made against the first respondent and the deceased V.P.S. Pillai. Exts. P2 and P4 memo of charges were issued to the first respondent and deceased V.P.S. Pillai in this regard. Later first respondent and V.P.S. Pillai were charge sheeted and prosecuted for offences under Sections 120B, 467, 468, 471, 420, 477A and 409 I.P.C. Criminal court found three persons including first petitioner and V.P.S. Pillai guilty of the charges. The Corporation proceeded to issue Ext. R1(a) memo of charges against all of them and departmental action was contemplated against all the delinquent employees on identical charges levelled against them in the criminal case. Enquiry was ordered and the enquiry officer was also appointed. Board of Directors of the Corporation on the basis of the enquiry report imposed punishment of removal from service with effect from 27.11.1987. Punishment of removal was imposed on all the three persons based on the enquiry conducted by the Corporation.

4. Judgment of the trial court in C.C.No. 40 of 1980 was taken up in appeal before the Court of Sessions. Thalassery in Criminal Appeal Nos. 270, 276 and 283 of 1985. Sessions Court by Ext. P7 judgment dated 12.7.1988 set aside the conviction and sentence passed by the Additional Judicial Magistrate of First

Class and acquitted all the accused. On acquittal, as we have already indicated, first writ petitioner sought reinstatement including backwages and other consequential benefits. We are informed by the counsel appearing for the Corporation that another person who was also proceeded along with first petitioner and V.P.S. Pillai was reinstated in service without backwages. Counsel submitted, if backwages with all consequential benefits as ordered in the judgment are to be paid, an amount of Rs. 8,96,000/- and the employee's contribution of the Provident Fund being Rs. 1,05,000/- would be payable to the first respondent herein. Another sum of Rs. 2.43 lakhs is to be paid to the legal representatives of V.P.S. Pillai. Counsel for the Corporation submitted that the Corporation is not, legally obliged to pay the said amounts since first petitioner as well as V.P.S. Pillai were not honourably acquitted by the Criminal Court. We are of the view the question as to whether first respondent and the legal representatives of V.P.S. Pillai would be entitled to get backwages and other benefits would depend upon the service conditions read with Ext. P7 judgment.

5. In this case relevant clause in the Conditions of Service which deals with employees arrested for debt or criminal charges is Clause 107 which reads as follows:

(a) On receipt of information to the Managing Director that an employee is arrested and kept custody for debt or on a criminal charge or otherwise for a period exceeding 48 hours shall be deemed to be under suspension from the date of arrested and shall not be allowed to draw any pay and allowances other than subsistence allowance and other allowances that may be granted to him until he is reinstated in service. Adjustment of his pay and allowance shall be made according to the circumstances of the case and in the light of the decision as to whether his absence is to be treated as on duty during the period of his absence. An employee who is convicted for a criminal offence under the Indian Penal Code or other law for the time being in force shall be liable to be dismissed from the Corporation.

(b) When conviction of any employee is set aside by higher court and the employee is honourably acquitted he will be reinstated in service and shall be deemed to be entitled to full pay and allowances from the date of acquittal the period being counted as on duty for all purposes, provided however that nothing in this rule shall effect the Corporation's right to take appropriate disciplinary action against the employee for offences in which the Corporation's interests are involved, in spite of such acquittal.

It is evident from the above mentioned clauses that if an employee is convicted for a criminal offence under the Indian Penal Code or other law he shall be liable to be dismissed from the service of the Corporation and only if an employee is honourably acquitted he would be entitled to full pay and allowances that too from the date of acquittal. The question to be decided in this case is whether the first petitioner and V.P.S. Pillai were honourably acquitted by the criminal court. Meaning of the expression "honourably acquittal" came up for consideration

before the apex court in AIR 1994 552 (SC) . In that case apex court was dealing with the provisions of the Reserve Bank of India (Staff) Regulations, 1948. In that case bank did not treat the suspension period as duty and did not pay full pay and allowances for the period because the employee was acquitted by the High Court on benefit of doubt. The apex court upheld the order of the Reserve Bank of India and held as follows:

"The above analysis of the relevant provisions of the Regulations, therefore, shows firstly, that the employee who is absent from duty on account of his arrest for debt or on a criminal charge or on account of his detention, is not to be considered to be absent on account of circumstances beyond his control. His absence throughout such period is to be treated as period spent on extraordinary leave when the absence is not followed by discharge, termination of service or dismissal, as the case may be. In the present case, respondent-employee was arrested for criminal offence u/s 302 IPC. He was, however, convicted by the Sessions Judge on December 13, 1976 u/s 304, Part I, IPC. After the copy of the judgment of the Sessions Court became available he was dismissed from service with effect from April 28, 1977. The order passed by the Bank on that day has been reproduced above. By that order the Bank, among other things, revoked the order of suspension and treated the period of suspension from (a) September 18, 1974 to October 5, 1974 as on extraordinary leave without pay and allowances and as a period not counted for increment. When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4)."

The expressions "honourably acquitted" and "acquitted of blame" occurring in certain Service Regulations came up for consideration before this court as well as other High Courts. In A.N. Raina v. State of Jammu and Kashmir (AIR 1962 J&K 681) the court held as follows:

"The expression "honourably acquitted" and "acquitted of blame" occurring in Clause 108(b)(i) and 109 have been used to describe an acquittal based on the positive innocence of the accused. In cases where a Tribunal or court acquits a person without mentioning either that the charge against him is false or that he has been acquitted on the ground of benefit of doubt, and if such acquittal is not based on technical defects it is for the authority giving effect to Rule 108 or 109 to read the Tribunals' Report or the Court's judgment and arrive bonafide at its own conclusion whether or not it is a case of honourable acquittal or acquittal of blame."

Learned single judge of this court in Mohammed Easa Sahib v. D.I.G. of Police (1990) (2) KLT 462) considered the expression while dealing with Rule 57 of Part I K.S.R. and held that the expression "acquitted of blame" must in the circumstances mean something more than a mere acquittal. Moreover giving benefit of doubt does not entitle the employee for full salary for the period of

suspension automatically.

6. A Bench of this court to which one of us (Radhakrishnan, J.) was a party has also considered the meaning of the expression "acquitted of blame" and "honourable acquittal" and examined the scope of the provision in Appukuttan Pillai v. State of Kerala (2001 (2) KLJ 112) and held that employee would be entitled to get pay and allowances only if he is acquitted of blame and not on mere acquittal.

7. We have to examine whether Ext. P7 judgment has acquitted the first petitioner and V.P.S. Pillai honourably. We have already extracted the service rules which would show that only if an employee is honourably acquitted he would be entitled to get full pay and allowances on the date of acquittal. We have perused Ext. P7 order of acquittal. The order reads as follows:

"So the evidence adduced in this case is not sufficient to come to a conclusion that the accused in this case have falsified the accounts and they have also forged the documents in order to commit offences charged against them. Therefore the evidence or record is not conclusive to come to a conclusion that the accused are guilty of offences charged against them. Moreover in this case a civil suit is pending for the realisation of the amount with respect to the supply of yarn, dyes and chemicals by virtue of the bills relied on by the prosecution. In the light of the pendency of the suit a genuine doubt is created in the mind of this court as to whether the offences charged against the accused is real. So, the benefit of doubt arisen out of the evidence adduced in this case will certainly quo to the accused."

It is therefore evident that the accused were acquitted on the ground of benefit of doubt which is not honourable acquittal or that they were acquitted out of blame. Since they are not honourably acquitted we are of the view going by Clause 107(a) of the Services Regulations first petitioner and late V.P.S. Pillai are not entitled to get full pay and allowances. It is so declared. Judgment of the learned single judge and that of the Division Bench are modified accordingly. The Civil Miscellaneous Petition is disposed of.